IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WRS, INC. d/b/a WRS MOTION PICTURE LABORATORIES, a corporation,	)	
Plaintiff,	)	
vs.	)	Civil Action No. 00-2041
PLAZA ENTERTAINMENT, INC., a corporation, ERIC PARKINSON, an individual, CHARLES von BERNUTH, an individual and JOHN HERKLOTZ, an individual,	)	Judge Arthur J. Schwab
Defendants	)	

MOTION FOR NUNC PRO TUNC CERTIFICATION THAT ENTRY OF JUDGMENT IS FINAL PURSUANT TO F.R.C.P. 54(b)

AND NOW comes, Plaintiff, WRS, Inc., by and through its counsel, Thomas E. Reilly, P.C., with the following Motion for Nunc Pro Tunc Certification that Entry of Judgment is Final and avers as follows:

1. On or about February 20, 2007, this Court granted summary judgment in favor of Plaintiff, WRS, Inc., and against the Defendant, John Herklotz, and entered default judgments against Defendants, Parkinson, von Bernuth and Plaza Entertainment, Inc.

2. As of the date of the filing of this Motion, the Court has not disposed of the cross-claims filed by Defendant, John Herklotz, against Charles von Bernuth and Eric Parkinson.

3. The cross –claims were severed by the Court and transferred to the United States District Court for California.

4. Following the Entry of the Orders on February 27, 2007, the Court closed the case with the understanding of, at a minimum, the Court, WRS, and Herklotz, that the Orders disposed of all matters between all parties and were, therefore, final under 28 U.S.C. §1291 and ripe for appeal.

5. Defendant, John Herklotz, filed an appeal to the Third Circuit from the Orders entering Judgment against him in which appeal both Herklotz and WRS have filed their respective Briefs.

6. On October 16, 2007, Defendant, Charles von Bernuth, filed a Motion with the District Court pursuant to F.R.C.P. 60(b) seeking relief from the Default Judgment entered against him and claiming, in part, that all matters that were pending before the District Court were not resolved by the Orders entering Default Judgment against Plaza, Parkinson, and von Bernuth, and Summary Judgment against Herklotz and the transfer of the severance of the cross-claims.

7. In particular, the Counterclaims filed by von Bernuth and Plaza were not expressly dismissed in the Orders. However, WRS was in Chapter 11 from August of 2001, at Case 01-28759-MBM, the confirmation of WRS Plan of Reorganization on June 23, 2005 (01-28759 Doc. 577), which discharged any potential liability on those Counterclaims and prohibited further prosecution on them against WRS 11 U.S.C. §1141(d)(1)(A) and §524(a)(2).

8. The District Court may consider von Bernuth's Motion and deny the same, but may not because of the pending appeal grant the requested relief, but the District Court may certify to the Appellate Court its intention to grant the relief, which may destroy the Appellate Court's jurisdiction to hear the Herklotz appeal.

9. In an effort to facilitate the process, von Bernuth has filed a Motion with the Third Circuit seeking remand of the case.

10. WRS' claim against John Herklotz on which Summary Judgment was entered in favor of WRS for liability and for damages was fully litigated by Herklotz, pertains only to Herklotz' several and independent liability to WRS under a Guaranty Agreement signed only by Herklotz, and was entered against Herklotz by an Order separate and distinct from the document by which the District Court entered Default Judgment entered against von Bernuth.

11. In entering the Judgment the District Court decided a cognizable claim for relief (ie: WRS claim against Herklotz in his guaranty) and made an ultimate disposition of one claim among multiple claims in the action. In this context, WRS' claim against Herklotz was final. Curtiss-Wright Corp. v. General Elec. Co., 446 U.S. 1, 100 S. Ct. 1460, 64 L. Ed. 2d 1, 1980 U.S. LEXIS 119, 29 Fed. R. Serv. 2d (Callaghan) 221 (1980).

12. Aside from the potential impact on the Appellate Court's jurisdiction to entertain Herklotz' appeal, von Bernuth's Motion has no impact on the separate Judgment WRS obtained against Herklotz.

13. F.R.C.P. 54 provides that a decision entered prior to the disposition of all of the parties on all claims does not terminate the action and leaves the decision subject to revision at any time before entry of Judgment adjudicating all of the claims and the rights and liabilities of all of the parties unless the Court makes an expressed determination that there is no just reason for delay in entry of Final Judgment and makes an expressed direction for the entry of said Judgment.

14. The District Court may make the certification under Rule 54(b) *nunc pro tunc*, which is sufficient to confer appellate jurisdiction. Tilden Financial Corp. v. Palo Tire Service, Inc., 596 F.2d 604, (3d Cir. Pa. 1979); Sean v. Okuma Mach. Tool, 1994 U.S. Dist. LEXIS 4771 (E.D. Pa. Apr. 12, 1994); see also: Good v. Ohio Edison Co., 104 F.3d 93, (6th Cir.), 1997 FED App. 0004P (6th Cir.), 36 Fed. R. Serv. 3d (Callaghan) 409 (6th Cir. 1997) and SafeTCare Mfg. v. Tele-Made, Inc., 497 F.3d 1262, (Fed. Cir. 2007).

15. WRS respectfully submits that because the Summary Judgment for liability and damages entered against Herklotz is sufficiently distinct and independent from the Default Judgment entered against von Bernuth, there does not, and did not at the time of the entry of Judgment against Herklotz, exist a "just reason for delaying the entry of final judgment" as to Herklotz.

WHEREFORE, Plaintiff, WRS, Inc., respectfully requests that the Court pursuant to F.R.C.P. 54(b) enter an Order modifying the Order of February 20, 2007, Doc. No. 139, to expressly determine, *nunc pro tunc*, that there is no just reason for delay in the entry of Final Judgment as to the John C. Herklotz and directing the entry of Final Judgment, *nunc pro tunc*, as of February 20, 2007 for WRS, Inc. and against John C. Herklotz in the amount set forth in the Order of February 20, 2007.

Respectfully submitted,

THOMAS E. REILLY, P.C.

BY: ____/s/ Thomas E. Reilly_____

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CERTIFICATE OF SERVICE

I, Thomas E. Reilly, Esquire, hereby certify that a true and correct copy of WRS' Motion for Nunc Pro Tunc Certification that Entry of Judgment is Final was delivered via first-class mail, postage pre-paid on the 2nd day of November, 2007, to the following:

James R. Walker, Esquire
Manion McDonough & Lucas, P.C.
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THOMAS E. REILLY, P.C.

BY: ____/s/ Thomas E. Reilly___
Thomas E. Reilly, Esquire